NEW JERSEY EMPLOYERS' LIABILITY ACT

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It has been almost inconceivable to me that this country of ours, so advanced in practically every other problem that it undertakes to solve, has been apparently so backward in what should appeal, and I believe does appeal, to mankind and womankind as the most important social problem of the day, that of the settlement of employers' liability, or the payment of workmen's compensation.

In New Jersey, as in other states, we have been battling with this problem for a number of years, and through legislative enactment about a year ago a commission was appointed by Governor Fort to study the subject and report their conclusions accompanied by a suggested act for legislative consideration. It has been my pleasure to serve on that commission, and during the present session of the Legislature to stand sponsor for a bill which has passed the Legislature with the support of both great political parties and has received the approval of Governor Woodrow Wilson. We believe this measure the most advanced, along these lines, yet attempted in this country.

During our investigation of this subject I was particularly impressed with the apparent lack of knowledge on the part of successful employers of labor as to the relative difference between employers' liability legislation and that embodying the principle of workmen's compensation. When employers' liability is considered, it matters not what the legislation may be, whether it removes many of the present obsolete defenses of the employer, or whether it adds to his defenses, the economic result is just the same, inasmuch as with employers' liability the method of settling disputes between master and servant results inevitably in war and litigation. On the other hand, with the complete setting aside of employers' liability and the substitution of a fair workmen's compensation law, acting automatically, the result is industrial peace.

It is generally conceded that 20 per cent of all litigation to-day, clogging the machinery of our courts, consists of suits between em-

ployer and employee; and certainly removing so much of this uncertainty and contest is in the interest of a developed, enlightened government. Unfortunately the constitutions of most of our states make it doubtful whether a compulsory compensation act can stand the test of the courts. Even by broadening or expanding as far as possible the police power, a compulsory law is still very questionable. The recent decision in New York State accentuates and emphasizes this belief.

We believe that we have not trespassed upon the constitution to the extent that the Supreme Court of New Jersey will declare the bill just signed by Governor Wilson unconstitutional. We contend that we give the right of trial by jury if either the employer or employee so elects; we have not taken away court trials, if they so elect; we have unquestionably removed, and so they should be removed, many of the defenses existing under present law, namely, assumption of risk, fellow servant doctrine, and to some extent modified the contributory negligence defense. I contend that that should be done away with, as a matter of common sense justice.

In doing that we have attached an employers' liability section to our workmen's compensation act, believing that with the removal of these defenses, the average employer will elect to act under the compensation feature of the act. We want him to. We would do just as New York tried to do, if the constitution would allow a compulsory compensation act, but we appreciate perfectly well, and we appreciate it all the more since the New York decision, that that would be unwise, and the presupposed result would be that we have nothing, no law at all. Organized labor, on the other hand, if sincere, and I believe it is, will also elect the compensation feature of this act. The Allied Federations in New Jersey unanimously passed favorable resolutions to this particular act. They have practically announced, through resolutions they have passed, that they propose, so far as organized labor can control that situation, to accept compensation and to be absolutely fair to the employer.

Our act makes it necessary for this election to be made before the accident occurs; in other words, we do not believe that it is fair that the employer should be under double liability of court trial and automatic compensation, so we believe in the scheme that we have worked out that we have practically enacted a compulsory workmen's compensation act, compulsory in terms, and it will be so

regarded by employers and employees, and yet we have not, so far as the constitutional requirements are concerned, taken away the absolute right of trial, if either party so elect before the accident occurred. I think that that is a different form from any yet enacted, and I am particularly happy that that state is New Jersey, and we will give employers all through this country an opportunity to see an act actually in operation and see just what the results are under that act, how expensive, how high the liability insurance may be under a direct compensation act. In other words, before we attempt to amend the Constitution of the United States, and the constitution of every state, the operation of just such an act as this will be of great benefit in helping to solve this problem from an American standpoint.

At first blush the employers in New Jersey were inclined to oppose the measure and the employees to favor it, but as the idea has been more generally explained and understood we find some of our largest employers frankly agreeing that ultimately they will be better off, not to be compelled to defend law-suits, but to have a fixed sum of payment covering all classes of accident, irrespective of the question of negligence; and that ultimately the compensation paid under this act will naturally be distributed, just where it belongs, on the consuming public.

In other words, American citizenship and humanity does not allow an injured man to walk about the streets uncared for; as, at great expense, the public is maintaining, mainly through charity, many institutions to properly look after unfortunate people. The public is paying this bill. Is it not then very much better to remove 20 per cent of the litigation of to-day and by natural economic law distribute the extra cost, if it is an extra cost, among the manufacturers and finally among the consumers, thus equably disposing of this perplexing question?

The time the injured man needs help is when the accident occurs, when his family requires assistance, and not after years of litigation. Litigation is most expensive to both employer and employee, and the majority of cases are taken on the part of the plaintiff by a lawyer on a contingent basis, so that even though a verdict is awarded in favor of the injured it has usually dwindled by the time it is received to less than 25 per cent of the actual money now so expended by employers of labor.

Again, it is an appalling fact that in America our ratio of accident and death in industrial employment is from two to five times as great as in countries abroad. It is reasonable to assume that workmen's compensation acts in general operation in America would result in manufacturers using more care to place in operation accident preventive devices and protection of all kind in their shops and factories. Many employers would naturally insure, as they do now, and their rate of insurance would unquestionably be computed just as is fire insurance, the care and attention they give to details reducing the risk. All this would naturally tend to reduce the ratio of accident and, after all is said and done, there is nothing so important in the consideration of this great question as, first, to reduce, if possible, this terrible cost, now charged to American industrial life.

Compensation laws must necessarily have the effect of reducing the friction and combat between employer and employee. To-day, when an accident occurs, it means, in many cases, a legal contest for damages. With an automatic compensation act this friction and antagonism is eliminated and industrial life is thereby vastly benefited.

The law's delay is another of the penalties of the present litigating system, and particularly important is the prevention of this terrific waste. It has been conclusively demonstrated that, of the millions of dollars now paid by employers for insurance against accident, in the final analysis only 25 per cent of the money the employer does so expend goes to the injured man. Statistics also prove that the injured workman receives a verdict in an average of only one case in ten.

With a compensation act in force every one of these ten workmen will receive something, unless the injury was inflicted either wilfully or through intoxication. It is true, of course, that the amount paid for each injury is in many cases less than what might be received through a court verdict; but, when the economic waste is all deducted, the net compensation to the injured will undoubtedly be greater under a modest compensation act than under the present system. Besides all antagonism and litigation will be forever removed. Surely all these indisputable facts must demonstrate to an aroused American public that the old common law theory of employers' liability, from every standpoint, is incorrect.

In our act, as is generally known, we have covered all industries. We could not reconcile ourselves to the fact that a man injured in a most hazardous trade was entitled to compensation from his employer, any more than would be a farm laborer who might have fallen from the threshing machine, or undergone any accident that might occur in ordinary employments, of whatever nature his pursuit might be. We have included every type of employment. We have been criticised somewhat, because of the domestic servant; why we should include domestic servants. Our answer to that has been, "What will the average housewife, or head of any house, do for his servant who had fallen down the steps or burned her hand?" He would naturally take care of such servant anyhow, sending her to the hospital, etc., which he would do without any law, and more than this law requires.

Let our efforts to obtain a remedy be exerted for the enactment of automatic compensation laws and our courts will be relieved; fewer accidents will result; antagonism that destroys discipline between master and servant will be largely removed; every injured employee will receive proper immediate relief and ultimately the burden will be equably borne by the consumer who, in the final analysis should pay the whole cost of production, be it wear and tear on machinery or the seemingly necessary contribution of life and limb to industrial accomplishment and development.

We in New Jersey have taken a determined stand among the states on this subject, and we feel proud of the position that we are now occupying.